

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Jurisdictional Separations and Referral to the)	CC Docket No. 80-286
Federal-State Joint Board – Proposal by State)	
Members of the Federal State Joint Board for)	
Interim Adjustments to Jurisdictional Separations)	
Allocation Factors and Category Relationships)	
Pending Comprehensive Reform)	

COMMENTS OF QWEST CORPORATION

Qwest Corporation (Qwest), through counsel and in response to the Federal Communications Commission’s (Commission) *Public Notice* released on March 30, 2010 (*Notice*),¹ files these comments in opposition to the proposal by the State Members of the Joint Federal-State Board (State Members and State Members Proposal) regarding interim adjustments to the Commission’s proposed extension of the current freeze of Part 36 category relationships and jurisdictional cost allocation factors until June 30, 2011.

I. UNIVERSAL SERVICE AND INTERCARRIER COMPENSATION ARE INEXTRICABLY LINKED TO SEPARATIONS

In their letter to Commissioner Clyburn, Chair of the Joint Board on Separations, proposing interim changes to the separations freeze, State Members assert that “distortions in the current separations process are so extreme that reform should occur expeditiously and not be deferred pending universal service and intercarrier compensation reform.”² Qwest respectfully disagrees. While Qwest has long-supported comprehensive reform of the Commission’s

¹ Federal-State Joint Board on Separations Seeks Comment on Proposal for Interim Adjustments to Jurisdictional Separations Allocation Factors and Category Relationships Pending Comprehensive Reform and Seeks Comment on Comprehensive Reform, Public Notice, FCC 10J-1, CC Docket No. 80-286, rel. Mar. 30, 2010.

² See Letter to Commissioner Mignon Clyburn, dated Mar. 5, 2010, attached to the *Notice* at 1.

jurisdictional separations rules,³ Qwest disagrees with the State Members' conclusion that separations reform should precede universal service and intercarrier compensation (ICC) reform.⁴ As Qwest has demonstrated in prior filings, the Commission's separations rules cannot be reformed in isolation.⁵

³ Among other things, Qwest has expressed its concern over the unnecessary complexity of the Commission's Part 36 rules, in effect prior to the current separations freeze, for allocating the costs of jointly-used facilities between jurisdictions. The separations rules reflect policy compromises developed over the last seven decades and provide little information on the actual cost of providing service in today's increasingly competitive telecommunications market which is characterized by rapid changes in technology. The separations rules in effect prior to July 1, 2001 are hopelessly out-dated and were developed in an era of a single provider when rate-of-return regulation was the norm in both federal and state jurisdictions. Neither today's telecommunications markets nor today's regulation bear much resemblance to such an environment. As competition continues to increase in telecommunications markets and more services become deregulated, jurisdictional separations should become unnecessary. In fact, in forbearing from enforcing its separations rules against Qwest and Verizon, the Commission "conclude[d] that there is no current, federal need for the Cost Assignment Rules, as they apply to Verizon and Qwest, to ensure that charges and practices are just, reasonable, and not unjustly or unreasonably discriminatory; to protect consumers; and to ensure the public interest (citing to the *AT&T Cost Assignment Forbearance Order*, 23 FCC Rcd 7302, 7307 ¶ 11 (2008), *pet. for recon. pending, pet. for review pending, NASUCA v. FCC*, Case No. 08-1226 (D.C. Cir., filed June 23, 2008)). In the *Matter of Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements, Petition of Qwest Corporation for Forbearance From Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of ARMIS Reporting Requirements, Petition of Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements, Petition of Verizon for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements, Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd 13647, 13662-63 ¶ 27 (2008) ("*AT&T ARMIS Order*"), *pet. for review pending sub nom. NASUCA v. FCC*, cons. Case Nos. 08-1226 (D.C. Cir. Docketed June 23, 2008) and 08-1353 (D.C. Cir. filed Nov. 4, 2008), *in abeyance*, Feb. 13, 2009.

⁴ Even though the separations rules no longer apply to Qwest, Qwest still supports an extension of the current separations freeze until the Commission completes comprehensive reform of the separations rules. The Commission granted Qwest relief from the cost assignment rules, including the part 36 separations rules on September 8, 2008. This relief was conditioned upon the Wireline Competition Bureau's approval of Qwest's Compliance Plan. On December 31,

Changes to the Commission's Universal Service Fund (USF) mechanisms and separations rule changes go hand-in-hand. There is no doubt that separations rule changes could affect the application of federal or state USF support.⁶ Currently, there are USF mechanisms in place at the federal level and in many states. These mechanisms provide support for carriers serving high-cost areas. In many circumstances, the application of USF support may vary with separations and the amount of costs assigned to a given area/jurisdiction.

It is self evident that there is also a close relationship between the Commission's ICC mechanisms and separations.⁷

Furthermore, the Commission's recently-released National Broadband Plan recommends significant changes to both USF and ICC⁸ -- which would inevitably impact jurisdictional separations. Thus, there is all the more reason to avoid piecemeal separations changes as proposed by the State Members and keep the current separations freeze in place until USF and ICC have been reformed.⁹

2008, the Bureau approved Qwest's Compliance Plan, as filed. *See AT&T ARMIS Order*, note 3, *supra*, and Public Notice, 23 FCC Rcd 18417 (2008).

⁵ Qwest *ex parte*, filed Apr. 27, 2006 at 5; Comments of Qwest Communications International Inc. on Further Notice of Proposed Rulemaking, CC Docket No. 01-92, filed May 23, 2005 at 8 (Qwest Intercarrier Comments).

⁶ *See* the Commission's recent decision amending both the USF rules and the separations rules to ensure that similarly-situated small incumbent LECs are treated similarly with regard to high-cost local switching support. *See In the Matter of High-Cost Universal Service Support; Jurisdictional Separations; Coalition for Equity in Switching Support Petition for Reconsideration*, WC Docket No. 05-337 and CC Docket No. 80-286, Report and Order and Memorandum Opinion and Order, FCC 10-44, rel. Mar. 18, 2010.

⁷ *See, e.g.*, Qwest Intercarrier Comments at 6-7; *and see* Reply Comments of Qwest Communications International Inc. on Further Notice of Proposed Rulemaking, CC Docket No. 01-92, filed July 20, 2005 at 7-8 (Qwest Intercarrier Reply Comments).

⁸ National Broadband Plan, Chapter 8.

⁹ The Commission must ensure that comprehensive reform of the separations process does not conflict with its parallel actions in the USF and ICC proceedings. *See In the Matter of*

II. THE STATE MEMBERS' INTERIM PROPOSAL WOULD NOT IMPROVE THE ACCURACY OF THE APPORTIONMENT OF REGULATED COSTS BETWEEN JURISDICTIONS

The State Members' Proposal should also be rejected because it is based on the mistaken assumption that the Part 36 separations rules provided an accurate allocation of regulated costs between jurisdictions prior to the separations freeze in 2001. The rules, in effect at the time, may have provided over all jurisdictional cost assignments that some regulators and other parties viewed as reasonable -- but that provides no basis for the claim that the rules were "accurate."

State Members confuse complexity with accuracy. No one questions the complexity of the separations rules. But, it is impossible to have an "accurate" set of rules for allocating common costs because there is no correct answer. The separations rules reflect policy compromises developed over the last seven decades. They provide little information on the actual cost of providing service in today's increasingly competitive telecommunications market which is characterized by rapid changes in technology. Indeed, there is no question that the separations rules in effect prior to July 1, 2001 were hopelessly out-dated and were developed in an era of a single provider when rate-of-return regulation was the norm in both federal and state jurisdictions. Neither today's telecommunications markets nor today's regulation bear much resemblance to such an environment.

Developing a Unified Intercarrier Compensation Regime, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005); *In the Matter of Comprehensive Review of Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link-Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005). Whether implemented after USF and ICC reform is accomplished, as Qwest has suggested in the past, or simultaneously with such action, the only meaningful way to reform separations is to adopt a very simple set of separations rules.

Building on this mistaken assumption concerning the “accuracy” of the pre-freeze separations rules, State Members propose interim adjustments to the assignment of investment used in the provision of special access and shared local loops that they claim will “reduce the most glaring imbalances in cost assignment that have arisen during the nine years of the separations freeze.”¹⁰ But, the State Members’ interim proposal merely tinkers with the rules to achieve a more favorable allocation of costs from the States’ viewpoint.¹¹

Problems with the Commission’s Part 36 rules cannot be remedied by “tinkering” or interim adjustments. A major overhaul, if not abandonment, of the separations rules (*i.e.*, in effect prior to the current separations freeze) is required. Trying to fine tune existing separations rules to reflect rapid changes in telecommunications markets and technology is likely to be a futile task and not one that the Commission should embark on. This should be kept in mind in particular when considering proposed “interim” revisions to the separations rules to address isolated “alleged” cost allocation anomalies that may exist for particular services such as unbundled network elements (UNEs), digital subscriber lines (DSL), special access/private lines and Internet traffic. In reforming separations, the Commission should focus on administrative simplicity and competitive neutrality -- and not on revising the pre-freeze Part 36 rules.¹²

¹⁰ State Members Proposal at 5.

¹¹ It is ironic that in proposing separations change to reduce supposed “glaring” cost assignment imbalances, State Members make no mention of the fact that the number of access lines provided by incumbent LECs has fallen by almost half in the time since the separations freeze was implemented. For example, the total number of access lines provided by Qwest declined from 18,040,000 as of June 30, 2001 to 10,266,000 as of December 31, 2009, a decline of 43%. (*See* 2Q2001 Full Press Release, and QCII Form 10K filed Feb. 16, 2010 for the Period Ending Dec. 31, 2009.)

¹² Part 36 is riddled with references to services that have long since ceased to exist, technologies that are no longer used in ILEC networks, and events that have long since occurred. For example, Part 36.123, operator systems equipment, discusses cord circuits and calculagraphs. (*See* 47 C.F.R. § 36.123.) References to teletypewriter exchange service are also abundant. (*See* 47 C.F.R. §§ 32.2311(a), 32.5100(c)(1), 36.374, and Part 36 Appendix.) While it is easy to

III. THE RECENTLY-RELEASED NATIONAL BROADBAND PLAN FURTHER HIGHLIGHTS THE IMPORTANCE OF CLOSELY COORDINATING USF, ICC AND SEPARATIONS CHANGES

One of the primary goals of the Commission's recently-released National Broadband Plan is to ensure that all Americans have access to affordable robust broadband service.¹³ The Broadband Plan proposes to fund the expansion of broadband service to areas without private sector coverage (*i.e.*, where private firms have not found it economic to provide service) through extensive changes to existing universal service funds and the creation of new USF funds (*e.g.*, the Connect America Fund).¹⁴ The Broadband Plan also recommends changes to ICC.¹⁵ At a minimum, implementation of the National Broadband Plan would entail dramatic changes to both USF funding and USF funding mechanisms. As noted above, changes in USF mechanisms

dismiss such references as remnants of the past, as a whole, they highlight the fact that the separations process was designed for another time and place and, clearly, is outdated.

Additionally, Part 36 is based on the general principle that telecommunications costs vary with time and occupancy -- which is not necessarily true today. (*See* 47 C.F.R. § 36.2.) Even if it were true, the critical issue is -- how time and occupancy are measured. The separations rules measure time based on out-dated circuit-switched technology where cost is a function of the amount of time that equipment is physically tied-up (*i.e.*, a connection is open). This may have made sense thirty years ago when a physical connection was established between a call's origination and its termination -- but it does not today.

Similarly, Part 36's methods are equally obsolete in cases where traffic studies are not required and Part 36 calls for "direct assignment." (*See, e.g.*, 47 C.F.R. §§ 36.121, 36.124, 36.126 and 36.142.) The concept of "direct assignment" is based on the doubtful assumption that a provider can determine the jurisdictional use of its equipment. Direct assignment is problematic because telephone companies have difficulty determining jurisdictional use. How customers say they are using a service, jurisdictionally, and their actual usage at any given point in time may vary widely since customers often use a single circuit for both interstate and intrastate communications. Moreover, carrier tariffs allow customers to identify the jurisdictional nature of the traffic on private line and special access services and to choose which tariff they are purchasing from (either interstate or intrastate). Not surprisingly, customer purchasing decisions are influenced by tariff prices in the different jurisdictions.

¹³ *See* National Broadband Plan, Chapter 2.

¹⁴ *Id.*, Chapter 8.

¹⁵ *Id.*

and separations go hand-in-hand. Similarly, ICC modifications and separations are closely related. As such, the separations rules should not be reformed in advance of impending USF and ICC changes. If anything, the Commission's recent release of the National Broadband Plan (*i.e.*, with its extensive proposed changes to USF) should highlight the importance of closely coordinating separations changes with USF and ICC changes. To adopt interim separations adjustments that have a broad impact in advance of USF and ICC reform, as State Members propose, "puts the cart before the horse."

IV. CONCLUSION

For the above-stated reasons, Qwest opposes State Members' proposed interim adjustments to the separations freeze and supports an extension of the separations freeze in its current form. Moreover, Qwest believes that separations reform should either be preceded by USF and ICC reform or occur simultaneously with USF and ICC reform. Qwest also believes that the resulting separations rules should be as administratively simple and competitively neutral as is possible.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST CORPORATION** to be: 1) filed with the FCC via its Electronic Comment Filing System in CC Docket No. 80-286; 2) served via e-mail on Mr. Daniel Ball, Pricing Policy Division, Wireline Competition Bureau at daniel.ball@fcc.gov, Ms. Lori Kenyon, Regulatory Commission of Alaska at lorraine.kenyon@alaska.gov and Mr. Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau at charles.tyler@fcc.gov; and 3) served via e-mail on the FCC's duplicating contractor, Best Copy and Printing, Inc. at fcc@bcpweb.com.

/s/ Richard Grozier

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